

Introduced by Senator Poochigian

February 22, 2005

An act to amend Sections 171b, 171e, and 12021 of, and to repeal Section 171c of, the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

SB 898, as introduced, Poochigian. Weapons in state buildings.

Existing law, subject to exceptions, provides that any person who brings or possesses within any state or local public building or at any meeting required to be open to the public, as specified, any of certain weapons or items is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison. Existing law exempts from these provisions, the State Capitol building and grounds and other specified buildings relating to legislative offices, the Governor's offices, and offices of constitutional officers.

This bill would include the State Capitol and those specified buildings within those provisions. The bill would also provide that the crime would also be punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail and that fine.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law, subject to exceptions, provides that any person who brings a loaded firearm into, or possesses a loaded firearm within, or upon the grounds of, the State Capitol, any legislative office, any office of the Governor or other constitutional officer, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing, shall be punished by imprisonment in a county jail for a period of not more than one year, a fine of not more than

\$1,000, or both such imprisonment and fine, or by imprisonment in the state prison.

This bill would repeal those provisions.

This bill would make additional conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 171b of the Penal Code is amended to
2 read:

3 171b. (a) Any person who brings or possesses within any
4 state or local public building or at any meeting required to be
5 open to the public pursuant to Chapter 9 (commencing with
6 Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9
7 (commencing with Section 11120) of Chapter 1 of Part 1 of
8 Division 3 of Title 2 of, the Government Code, any of the
9 following is guilty of a public offense punishable by
10 imprisonment in a county jail for not more than one year, *a fine*
11 *of not more than one thousand dollars (\$1,000), or both*
12 *imprisonment and that fine, or by imprisonment* in the state
13 prison:

14 (1) Any firearm.

15 (2) Any deadly weapon described in Section 653k or 12020.

16 (3) Any knife with a blade length in excess of four inches, the
17 blade of which is fixed or is capable of being fixed in an
18 unguarded position by the use of one or two hands.

19 (4) Any unauthorized tear gas weapon.

20 (5) Any taser or stun gun, as defined in Section 244.5.

21 (6) Any instrument that expels a metallic projectile, such as a
22 BB or pellet, through the force of air pressure, CO₂ pressure, or
23 spring action, or any spot marker gun or paint gun.

24 (b) Subdivision (a) shall not apply to, or affect, any of the
25 following:

1 (1) A person who possesses weapons in, or transports weapons
2 into, a court of law to be used as evidence.

3 (2) (A) A duly appointed peace officer as defined in Chapter
4 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired
5 peace officer with authorization to carry concealed weapons as
6 described in subdivision (a) of Section 12027, a full-time paid
7 peace officer of another state or the federal government who is
8 carrying out official duties while in California, or any person
9 summoned by any of these officers to assist in making arrests or
10 preserving the peace while he or she is actually engaged in
11 assisting the officer.

12 (B) Notwithstanding subparagraph (A), subdivision (a) shall
13 apply to any person who brings or possesses any weapon
14 specified therein within any courtroom if he or she is a party to
15 an action pending before the court.

16 (3) A person holding a valid license to carry the firearm
17 pursuant to Article 3 (commencing with Section 12050) of
18 Chapter 1 of Title 2 of Part 4.

19 (4) A person who has permission to possess that weapon
20 granted in writing by a duly authorized official who is in charge
21 of the security of the state or local government building.

22 (5) A person who lawfully resides in, lawfully owns, or is in
23 lawful possession of, that building with respect to those portions
24 of the building that are not owned or leased by the state or local
25 government.

26 (6) A person licensed or registered in accordance with, and
27 acting within the course and scope of, Chapter 11.5 (commencing
28 with Section 7512) or Chapter 11.6 (commencing with Section
29 7590) of Division 3 of the Business and Professions Code who
30 has been hired by the owner or manager of the building if the
31 person has permission pursuant to paragraph (5).

32 (7) (A) A person who, for the purpose of sale or trade, brings
33 any weapon that may otherwise be lawfully transferred, into a
34 gun show conducted pursuant to Sections 12071.1 and 12071.4.

35 (B) A person who, for purposes of an authorized public
36 exhibition, brings any weapon that may otherwise be lawfully
37 possessed, into a gun show conducted pursuant to Sections
38 12071.1 and 12071.4.

39 (c) As used in this section, “state or local public building”
40 means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section ~~171e~~, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

SEC. 2. Section 171c of the Penal Code is repealed.

~~171e. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any such officer to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer, a member of the military forces of this state or the United States engaged in the performance of his duties, or a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, who brings a loaded firearm into, or possesses a loaded firearm within, the State Capitol, any legislative office, any office of the Governor or other constitutional officer, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing, or upon the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of Sacramento, shall be punished by imprisonment in the county jail for a period of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine, or by imprisonment in the state prison.~~

SEC. 3. Section 171e of the Penal Code is amended to read:

171e. A firearm shall be deemed loaded for the purposes of Sections ~~171e~~ and Section 171d whenever both the firearm and unexpended ammunition capable of being discharged from such firearm are in the immediate possession of the same person.

In order to determine whether or not a firearm is loaded for the purpose of enforcing Section ~~171e~~ or 171d, peace officers are authorized to examine any firearm carried by anyone on his

1 person or in a vehicle while in any place or on the grounds of any
2 place in or on which the possession of a loaded firearm is
3 prohibited by Section ~~171e~~ or 171d. Refusal to allow a peace
4 officer to inspect a firearm pursuant to the provisions of this
5 section constitutes probable cause for arrest for violation of
6 Section ~~171e~~ or 171d.

7 SEC. 4. Section 12021 of the Penal Code is amended to read:

8 12021. (a) (1) Any person who has been convicted of a
9 felony under the laws of the United States, of the State of
10 California, or any other state, government, or country, or of an
11 offense enumerated in subdivision (a), (b), or (d) of Section
12 12001.6, or who is addicted to the use of any narcotic drug, who
13 owns, purchases, receives, or has in his or her possession or
14 under his or her custody or control any firearm is guilty of a
15 felony.

16 (2) Any person who has two or more convictions for violating
17 paragraph (2) of subdivision (a) of Section 417 and who owns,
18 purchases, receives, or has in his or her possession or under his
19 or her custody or control any firearm is guilty of a felony.

20 (b) Notwithstanding subdivision (a), any person who has been
21 convicted of a felony or of an offense enumerated in Section
22 12001.6, when that conviction results from certification by the
23 juvenile court for prosecution as an adult in an adult court under
24 Section 707 of the Welfare and Institutions Code, who owns or
25 has in his or her possession or under his or her custody or control
26 any firearm is guilty of a felony.

27 (c) (1) Except as provided in subdivision (a) or paragraph (2)
28 of this subdivision, any person who has been convicted of a
29 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
30 subdivision (d) of Section 148, Section 171b, ~~171e~~, 171d, 186.28,
31 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6,
32 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b)
33 or (d) of Section 12034, Section 12040, subdivision (b) of
34 Section 12072, subdivision (a) of former Section 12100, Section
35 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
36 Welfare and Institutions Code, any firearm-related offense
37 pursuant to Sections 871.5 and 1001.5 of the Welfare and
38 Institutions Code, or of the conduct punished in paragraph (3) of
39 subdivision (g) of Section 12072, and who, within 10 years of the
40 conviction, owns, purchases, receives, or has in his or her

1 possession or under his or her custody or control, any firearm is
2 guilty of a public offense, which shall be punishable by
3 imprisonment in a county jail not exceeding one year or in the
4 state prison, by a fine not exceeding one thousand dollars
5 (\$1,000), or by both that imprisonment and fine. The court, on
6 forms prescribed by the Department of Justice, shall notify the
7 department of persons subject to this subdivision. However, the
8 prohibition in this paragraph may be reduced, eliminated, or
9 conditioned as provided in paragraph (2) or (3).

10 (2) Any person employed as a peace officer described in
11 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose
12 employment or livelihood is dependent on the ability to legally
13 possess a firearm, who is subject to the prohibition imposed by
14 this subdivision because of a conviction under Section 273.5,
15 273.6, or 646.9, may petition the court only once for relief from
16 this prohibition. The petition shall be filed with the court in
17 which the petitioner was sentenced. If possible, the matter shall
18 be heard before the same judge who sentenced the petitioner.
19 Upon filing the petition, the clerk of the court shall set the
20 hearing date and shall notify the petitioner and the prosecuting
21 attorney of the date of the hearing. Upon making each of the
22 following findings, the court may reduce or eliminate the
23 prohibition, impose conditions on reduction or elimination of the
24 prohibition, or otherwise grant relief from the prohibition as the
25 court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the
27 petitioner is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as
29 specified in subdivision (a), (b), (d), (e), or (g) or Section
30 12021.1, and the court is not presented with any credible
31 evidence that the petitioner is a person described in Section 8100
32 or 8103 of the Welfare and Institutions Code.

33 (C) Finds that the petitioner does not have a previous
34 conviction under this subdivision no matter when the prior
35 conviction occurred.

36 In making its decision, the court shall consider the petitioner's
37 continued employment, the interest of justice, any relevant
38 evidence, and the totality of the circumstances. The court shall
39 require, as a condition of granting relief from the prohibition
40 under this section, that the petitioner agree to participate in

1 counseling as deemed appropriate by the court. Relief from the
2 prohibition shall not relieve any other person or entity from any
3 liability that might otherwise be imposed. It is the intent of the
4 Legislature that courts exercise broad discretion in fashioning
5 appropriate relief under this paragraph in cases in which relief is
6 warranted. However, nothing in this paragraph shall be construed
7 to require courts to grant relief to any particular petitioner. It is
8 the intent of the Legislature to permit persons who were
9 convicted of an offense specified in Section 273.5, 273.6, or
10 646.9 to seek relief from the prohibition imposed by this
11 subdivision.

12 (3) Any person who is subject to the prohibition imposed by
13 this subdivision because of a conviction of an offense prior to
14 that offense being added to paragraph (1) may petition the court
15 only once for relief from this prohibition. The petition shall be
16 filed with the court in which the petitioner was sentenced. If
17 possible, the matter shall be heard before the same judge that
18 sentenced the petitioner. Upon filing the petition, the clerk of the
19 court shall set the hearing date and notify the petitioner and the
20 prosecuting attorney of the date of the hearing. Upon making
21 each of the following findings, the court may reduce or eliminate
22 the prohibition, impose conditions on reduction or elimination of
23 the prohibition, or otherwise grant relief from the prohibition as
24 the court deems appropriate:

25 (A) Finds by a preponderance of the evidence that the
26 petitioner is likely to use a firearm in a safe and lawful manner.

27 (B) Finds that the petitioner is not within a prohibited class as
28 specified in subdivision (a), (b), (d), (e), or (g) or Section
29 12021.1, and the court is not presented with any credible
30 evidence that the petitioner is a person described in Section 8100
31 or 8103 of the Welfare and Institutions Code.

32 (C) Finds that the petitioner does not have a previous
33 conviction under this subdivision, no matter when the prior
34 conviction occurred.

35 In making its decision, the court may consider the interest of
36 justice, any relevant evidence, and the totality of the
37 circumstances. It is the intent of the Legislature that courts
38 exercise broad discretion in fashioning appropriate relief under
39 this paragraph in cases in which relief is warranted. However,

1 nothing in this paragraph shall be construed to require courts to
2 grant relief to any particular petitioner.

3 (4) Law enforcement officials who enforce the prohibition
4 specified in this subdivision against a person who has been
5 granted relief pursuant to paragraph (2) or (3) shall be immune
6 from any liability for false arrest arising from the enforcement of
7 this subdivision unless the person has in his or her possession a
8 certified copy of the court order that granted the person relief
9 from the prohibition. This immunity from liability shall not
10 relieve any person or entity from any other liability that might
11 otherwise be imposed.

12 (d) (1) Any person who, as an express condition of probation,
13 is prohibited or restricted from owning, possessing, controlling,
14 receiving, or purchasing a firearm and who owns, purchases,
15 receives, or has in his or her possession or under his or her
16 custody or control, any firearm but who is not subject to
17 subdivision (a) or (c) is guilty of a public offense, which shall be
18 punishable by imprisonment in a county jail not exceeding one
19 year or in the state prison, by a fine not exceeding one thousand
20 dollars (\$1,000), or by both that imprisonment and fine. The
21 court, on forms provided by the Department of Justice, shall
22 notify the department of persons subject to this subdivision. The
23 notice shall include a copy of the order of probation and a copy
24 of any minute order or abstract reflecting the order and
25 conditions of probation.

26 (2) For any person who is subject to subdivision (a), (b), or
27 (c), the court shall, at the time judgment is imposed, provide on a
28 form supplied by the Department of Justice, a notice to the
29 defendant prohibited by this section from owning, purchasing,
30 receiving, possessing or having under his or her custody or
31 control, any firearm. The notice shall inform the defendant of the
32 prohibition regarding firearms and include a form to facilitate the
33 transfer of firearms. Failure to provide the notice shall not be a
34 defense to a violation of this section.

35 (e) Any person who (1) is alleged to have committed an
36 offense listed in subdivision (b) of Section 707 of the Welfare
37 and Institutions Code, an offense described in subdivision (b) of
38 Section 1203.073, any offense enumerated in paragraph (1) of
39 subdivision (c), or any offense described in subdivision (a) of
40 Section 12025, subdivision (a) of Section 12031, or subdivision

(a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, or issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

1 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
2 (e), the trier of fact shall determine whether the defendant was
3 acting within the provisions of the exemption created by this
4 subdivision.

5 (3) The defendant has the burden of proving by a
6 preponderance of the evidence that he or she comes within the
7 provisions of the exemption created by this subdivision.

8 (i) Subject to available funding, the Attorney General, working
9 with the Judicial Council, the California Alliance Against
10 Domestic Violence, prosecutors, and law enforcement, probation,
11 and parole officers, shall develop a protocol for the
12 implementation of the provisions of this section. The protocol
13 shall be designed to facilitate the enforcement of restrictions on
14 firearm ownership, including provisions for giving notice to
15 defendants who are restricted, provisions for informing those
16 defendants of the procedures by which defendants shall dispose
17 of firearms when required to do so, provisions explaining how
18 defendants shall provide proof of the lawful disposition of
19 firearms, and provisions explaining how defendants may obtain
20 possession of seized firearms when legally permitted to do so
21 pursuant to this section or any other provision of law. The
22 protocol shall be completed on or before January 1, 2005.

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.